



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R06-OAR-2020-0167; FRL-8989-02-R6]**

## **Air Plan Approval; New Mexico; Clean Air Act Requirements for Emissions Inventory and Emissions Statement for Nonattainment Area for the 2015 Ozone National Ambient Air Quality Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving the State Implementation Plan (SIP) submitted by the State of New Mexico to meet the Emissions Inventory (EI), and Emissions Statement (ES) requirements of the Federal Clean Air Act (CAA or the Act) for the Sunland Park ozone nonattainment area for the 2015 8-hour ozone national ambient air quality standards (NAAQS). EPA is approving this action pursuant to section 110 and part D of the CAA and EPA's regulations.

**DATES:** This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** The EPA has established a docket for this action, Docket No. EPA-R06-OAR-2020-0167 All documents in the docket are listed on the <https://www.regulations.gov>. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nevine Salem, EPA Region 6 Office, Infrastructure and Ozone Section, 214-665-7222, [salem.nevine@epa.gov](mailto:salem.nevine@epa.gov). Out of an

abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID-19. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

## **I. Background**

On October 15, 2021 (86 FR 57388), the EPA published a Notice of Proposed Rulemaking (NPRM) for the State of New Mexico, for the approval of the State’s 2017 base year emission inventories and emissions statement requirements for the Sunland Park Sunland Park marginal ozone nonattainment area for the 2015 ozone NAAQS. The background for this action and rationale for EPA’s proposed action are explained in the NPRM and will not be restated here. One anonymous comment was received during the public comment period which ended on November 15, 2021.

## **II. Response to Comments**

**Comment:** The commenter believes that New Mexico is doing its best in implementing regulations promulgated by the EPA under the CAA. The commenter inquired about EPA’s procedure for enforcing the CAA regulations, and expressed concern that the clean air policy would fail without the collective actions of other states.

**Response:** We appreciate the commenter’s perspective that New Mexico is doing its best in implementing CAA regulations promulgated by the EPA. However, the issues raised by the commenter are outside the scope of this action. This action is limited to the approval of the Emissions Inventory and Emissions Statement requirements for the 2015 8-hour ozone NAAQS submitted by the state of New Mexico, for the Sunland Park ozone nonattainment area, New Mexico, under the CAA.

The CAA establishes a comprehensive program for controlling and improving the nation’s air quality through state and federal regulation. This comprehensive program is based on

cooperative federalism that divides responsibilities between the EPA and the states. Under the CAA, the EPA establishes the national air quality standards, and the states are primarily responsible for implementing those standards, with oversight from EPA.

Upon the promulgation or revision of a NAAQS by the EPA, each state is required to submit a state implementation plan (SIP). The SIP provides the “implementation, maintenance, and enforcement” of the NAAQS, and must “contain adequate provisions” prohibiting air emissions in amounts that contribute significantly to nonattainment or that interfere with the maintenance of the NAAQS in neighboring states. 42 U.S.C. 7410(a)(2)(D)(i)(I). Where a state fails to submit all or a portion of a SIP as required by the CAA, or where the EPA disapproves a SIP as not meeting the CAA requirements, the EPA will assert federal oversight authority and develop a federal implementation plan (FIP) for the state. It may also develop a FIP for tribal lands if a tribe elects not to develop their own implementation plan, as appropriate.

The applicable state and the EPA both have authority to bring enforcement actions for violations of federally-approved SIPs. Members of the public can also file citizen suits under the CAA to address violations of SIPs. For more details on Air Quality Implementation Plans please visit <https://www.epa.gov/air-quality-implementation-plans>.

### **III. Final Action**

EPA is approving the New Mexico SIP revisions submitted on September 10, 2020 to address the emissions inventory and emissions statement requirements for the Sunland Park area for the 2015 ozone NAAQS. The emissions inventory we are approving is listed in Table 1 of the NPRM. We are approving the emissions inventory because it contains a comprehensive, accurate, and current inventory of actual emissions for all relevant sources in accordance with CAA sections 172(c)(3) and 182(a)(1) requirements. We are also approving the New Mexico emission statement because it includes the approved provision addressing the emission statement requirement in CAA section 182(a)(3)(B). New Mexico adopted the emission inventories consistent with the requirement for reasonable public notice and opportunity for a public hearing.

#### IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a Start Printed Page 11875 copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

## **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and record keeping requirements, Volatile organic compounds

Dated: February 28, 2022.

**Earthea Nance,**  
*Regional Administrator, Region 6.*

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

## **PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart GG—New Mexico**

2. In §52.1620 (e), the table titled “EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP” is amended by adding the entry “2017 Emissions Inventory and Emissions Statement for the 2015 Ozone NAAQS” at the end of the table to read as follows:

#### **§ 52.1620 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

#### **EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP**

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
* * * * *				
2017 Emissions Inventory and Emissions Statement for the 2015 Ozone NAAQS	Sunland Park ozone nonattainment area	9/20/2020	<b>[Insert the date of publication in the <i>Federal Register</i>] [Insert <i>Federal Register</i> citation]</b>	